

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**PLAINTIFFS' MOTION TO COMPEL
NAMED PLAINTIFFS' A-FILE
INFORMATION**

**NOTE ON MOTION CALENDAR:
January 24, 2020**

I. INTRODUCTION

Defendants continue to wrongly withhold significant information and analysis, created by Defendant U.S. Citizenship and Immigration Services (USCIS), about Named Plaintiffs that is highly relevant to their claims challenging the CARRP and related extreme vetting programs.¹ Plaintiffs move for an order compelling Defendants to produce information regarding how officers evaluated whether and concluded that a national security concern existed with respect to

¹ Defendants refuse to acknowledge publicly whether the Named Plaintiffs were subjected to CARRP. Named Plaintiffs, however, all plausibly alleged in the Second Amended Complaint that their applications were subjected to CARRP. *See* Dkt. 47 (SAC), Dkt. 69 (order on Defendants' Motion to Dismiss). To the extent their applications were subjected to CARRP, Defendants should provide the information regarding why as further explained in this brief.

the Named Plaintiffs. Defendants continue to withhold the “articulable link” connecting Named Plaintiffs to an activity, individual, or organization as described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Immigration and Nationality Act.

II. PROCEDURAL BACKGROUND

Plaintiffs’ multi-year efforts to obtain information on why Named Plaintiffs’ applications were subject to CARRP are chronicled in a prior motion to compel at Dkt. 221 at 3–4. Ultimately, the Court permitted Defendants to redact information originating from law enforcement agencies external to USCIS. *See* Dkt. 274 at 5. But the Court ordered Defendants to produce “why” information that originated solely within USCIS. *Id.* On this point, the Court stressed that “the ‘internal’ vetting procedures used by USCIS to be most relevant for the current dispute, and the Court [saw] little justification for withholding this information based on the law enforcement privilege.” *Id.* Defendants re-produced Named Plaintiffs’ A-files but significant redactions with respect to USCIS-generated analysis remain.

On December 18, 2019, Plaintiffs emailed Defendants noting remaining concerns with Named Plaintiffs’ A-files. Declaration of Cristina Sepe ISO Motion to Compel Named Plaintiffs’ A-File Information (“Sepe Decl.”) ¶ 2. Following the parties’ December 31, 2019 meet and confer, Plaintiffs sent Defendants, by Bates numbers, documents within each Named Plaintiff A-files that Defendants should re-review. Specifically, Plaintiffs noted where significant redactions were made to USCIS memoranda and worksheets, entirely redacting information explaining the basis for USCIS’s concerns, and where entire pages that were redacted, rendering it impossible to evaluate Defendants’ privilege assertions. *See id.*, Ex. A. On January 8, 2020, Defendants responded that the A-files were properly redacted and would not reproduce the A-files. *See id.*, Ex. B.

III. MEET AND CONFER CERTIFICATION

On December 31, 2019, the parties held a telephonic meet and confer to avoid the Court’s involvement in this dispute. Sepe Decl. ¶¶ 3–4. The parties further exchanged email

1 communications regarding this issue following the parties' meet and confer. *See id.*, Ex. A and
 2 B. Despite good faith efforts, the parties remain at an impasse regarding this issue.

3 IV. LEGAL STANDARD

4 Rule 26 authorizes broad discovery "regarding any nonprivileged matter that is relevant
 5 to any party's claim or defense...." Fed. R. Civ. P. 26(b)(1); *see Broyles v. Convergent*
 6 *Outsourcing, Inc.*, No. C16-775-RAJ, 2017 WL 2256773, at *1 (W.D. Wash. May 23, 2017)
 7 ("Most importantly, the scope of discovery is broad."). The party opposing discovery "carr[ies] a
 8 heavy burden of showing why discovery was denied." *Blankenship v. Hearst Corp.*, 519 F.2d
 9 418, 429 (9th Cir. 1975). The party seeking to compel discovery need only show that its request
 10 complies with the broad relevancy requirements of Rule 26(b)(1) to place this heavy burden on
 11 the opposing party. *Colaco v. ASIC Advantage Simplified Pension Plan*, 301 F.R.D. 431, 434
 12 (N.D. Cal. 2014).

13 V. ARGUMENT

14 Missing from Named Plaintiffs' A-files are unredacted explanations for why and how
 15 USCIS officers came to conclude a national security concern existed regarding their immigration
 16 benefit applications and thus appropriate for CARRP processing. *See* Policy for Vetting and
 17 Adjudication Cases with National Security Concerns at 3–4, accessed at:
 18 [https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/](https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/CARRP_Guidance.pdf)
 19 [Policies_and_Manuals/CARRP_Guidance.pdf](https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/CARRP_Guidance.pdf) (last visited January 9, 2020). This information
 20 relates to the processing of Named Plaintiffs' "processing of immigration benefits" and "highly
 21 relevant to Plaintiffs' claims." Dkt. 274 at 5.

22 An individual is subject to CARRP if USCIS determines that they have a "national
 23 security concern," which is broadly defined as "an articulable link—no matter how attenuated or
 24 unsubstantiated—to prior, current, or planned involvement in, or association with, an activity,
 25 individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B)
 26 of the INA." Dkt. 47 ¶ 62; Dkt. 74 at 20. "[A]n individual need not be actually suspected of

engaging in any unlawful activity or joining any proscribed organization to be branded a national security concern under CARRP.” Dkt. 47 ¶ 63; Dkt. 74 at 20. Instead, people can be subjected to CARRP for acts such as making donations to a charitable organization without knowing that the organization was engaged in proscribed activity, travelling through or residing in certain areas, making a transfer of funds, being employed in certain occupations, having government affiliations, or simply being an associate of an individual under suspicion by the U.S. government. *See* Dkt. 47 ¶¶ 73–74; Dkt. 74 at 23.

Plaintiffs are entitled to the analysis done by USCIS officers to establish a national security concern, but Named Plaintiffs’ A-files continue to leave this information largely redacted. *See, e.g.*, Sepe Decl., Ex. C (sealed) (redacting information on identifying NS Concern); Ex. D (sealed) (redacting information regarding articulable link).² This information is very relevant to Plaintiffs’ claims: If Named Plaintiffs’ information reveals that their applications were subject to CARRP for reasons that are vague, overbroad, or discriminatory, that information would further undercut CARRP’s statutory and constitutional validity.

Moreover, entire bodies of memoranda from USCIS remain redacted or entire spans of pages are wholly redacted as law enforcement privileged despite the Court’s repeated admonitions “to use the privilege deliberately” and “to be exacting with which documents fall within this privilege.” Dkt. 148 at 5; Sepe Decl., Ex. E (sealed) (redacting the body of a USCIS memorandum), and Ex. F (redacting twelve consecutive pages); *see also* Oct. 24, 2019 Tr. 12:6-10 (expressing concerns with Defendants’ that redactions should be “pinpoint” “as opposed to pages or large sections and gaps”). Defendants’ “wholesale redactions” provide no context for Plaintiffs to evaluate the propriety of the information withheld by Defendants and whether the information withheld discloses internal vetting procedures used by USCIS to process Named Plaintiffs’ applications for immigration benefits. *See* Dkt. 274 at 5.

² Plaintiffs provide excerpts of one Named Plaintiff’s A-file, but concerns regarding the scope and breadth of Defendants’ redactions span all Named Plaintiffs’ A-files.

VI. CONCLUSION

Plaintiffs respectfully the Court grant this Motion to Compel and order Defendants to produce USCIS-generated analysis justifying Named Plaintiffs' immigration benefits applications to CARRP. These documents are important to Plaintiffs' claims. Plaintiffs alternatively request the Court review the Named Plaintiffs' A-files in camera to determine the propriety of Defendants' redactions and whether further disclosure is warranted.

Respectfully submitted,

s/ Jennifer Pasquarella
Jennifer Pasquarella (admitted pro hac vice)
ACLU Foundation of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5236
jpasquarella@aclusocal.org

s/ Matt Adams
Matt Adams #28287
Northwest Immigrant Rights Project
615 Second Ave., Ste. 400
Seattle, WA 98122
Telephone: (206) 957-8611
matt@nwirp.org

s/ Stacy Tolchin
Stacy Tolchin (admitted pro hac vice)
Law Offices of Stacy Tolchin
634 S. Spring St. Suite 500A
Los Angeles, CA 90014
Telephone: (213) 622-7450
Stacy@tolchinimmigration.com

s/ Hugh Handeyside
s/ Lee Gelernt
s/ Hina Shamsi
Hugh Handeyside #39792
Lee Gelernt (admitted pro hac vice)
Hina Shamsi (admitted pro hac vice)
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
Telephone: (212) 549-2616
lgelernt@aclu.org
hhandeyside@aclu.org
hshamsi@aclu.org

DATED: January 9, 2020

s/ Harry H. Schneider, Jr.
s/ Nicholas P. Gellert
s/ David A. Perez
s/ Cristina Sepe
s/ Heath L. Hyatt
Harry H. Schneider, Jr. #9404
Nicholas P. Gellert #18041
David A. Perez #43959
Cristina Sepe #53609
Heath L. Hyatt #54141
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
HSchneider@perkinscoie.com
NGellert@perkinscoie.com
DPerez@perkinscoie.com
CSepe@perkinscoie.com
HHyatt@perkinscoie.com

s/ Trina Realmuto
s/ Kristin Macleod-Ball
Trina Realmuto (admitted pro hac vice)
Kristin Macleod-Ball (admitted pro hac vice)
American Immigration Council
1318 Beacon Street, Suite 18
Brookline, MA 02446
Telephone: (857) 305-3600
trealmuto@immcouncil.org
kmacleod-ball@immcouncil.org

s/ John Midgley
John Midgley #6511
ACLU of Washington
P.O. Box 2728
Seattle, WA 98111
Telephone: (206) 624-2184
jmidgley@aclu-wa.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on the date indicated below, I caused service of the foregoing document via the CM/ECF system that will automatically send notice of such filing to all counsel of record herein.

DATED this 9th day of January, 2020, at Washington, DC.

By: s/ Cristina Sepe

Cristina Sepe

Perkins Coie LLP

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

CSepe@perkinscoie.com